

CENTRAL INTELLIGENCE AGENCY
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Honorable Bella S. Abzug, Chairwoman
Subcommittee on Government Information
and Individual Rights
Committee on Government Operations
House of Representatives
Washington, D. C. 20515

Dear Madam Chairwoman:

This is in response to your letter requesting information on Agency procedures related to the classification of official information pursuant to Executive Order (E. O.) 11652 as well as aspects of the protection of Agency intelligence sources and methods under the National Security Act of 1947 and the above mentioned Executive Order. Enclosed herewith are the questions set forth in your letter followed by the answers.

As you know, the President has recently issued E. O. 11905. As a result, Agency regulations dealing with the classification of information and the protection of sources and methods will be reviewed and may be revised. Therefore, the enclosed information, while it describes the current state of Agency procedures in this area, may change within the near future. Additionally, there are several references in this letter to Agency regulation HR 10-23 which implements the various provisions of orders and directives on this subject. Since a copy of this regulation has previously been forwarded to your Subcommittee, reference is made thereto without including the regulation as an enclosure.

Sincerely,

/s/ George Bush

George Bush
Director

Enclosure

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Response to Questions Posed by the Government Information
and Individual Rights Subcommittee of the
Committee of Government Operations
of the House of Representatives

QUESTION:

- "1) Implementation of Policy. Please identify each office in your agency that is functionally responsible for developing and publishing regulations in implementation of policy in Executive Order 11652 for classifying and declassifying official information."

ANSWER: The Deputy Director for Administration, in consultation with and upon the legal advice of the Office of General Counsel, is responsible for promulgating all Agency regulations. The Deputy Director for Administration, in drafting regulations implementing the provisions of E. O. 11652, coordinates those regulations with all interested components of the Agency. The Deputy Director for Administration issues such regulations unless the General Counsel advises that such regulation must be signed by the Director of Central Intelligence.

QUESTION:

- "2) Criteria for Official Information. What is the criteria established by your agency for its use in determining whether an item of information is 'official information' and subject to possible classification under Executive Order 11652? Please include comment especially applicable to intelligence sources and methods."

ANSWER: Agency regulation states that "all information, classified or unclassified, received, compiled, or created by the CIA (except personal copies of unclassified personnel papers) is official data and the property of the U. S. Government."

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QUESTION:

- "3) Criteria for Classifying. Please state the criteria established by your agency for its use in determining:

- a) whether an item of official information other than intelligence sources and methods, requires protection under Executive Order 11652 against unauthorized disclosure in the interest of the national defense of the United States?"

ANSWER: Agency regulation [] Part I, paragraph d, sets forth the criteria used to determine whether official information requires protection under E. O. 11652.

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- "b) whether an item of official information revealing an intelligence source requires protection under 50 U.S.C. 403(d)(3) and Executive Order 11652 against unauthorized disclosure in the interest of the national defense of the United States." and
- "c) whether an item of official information revealing an intelligence method requires protection under 50 U.S.C. 403(d)(3) and Executive Order 11652 against unauthorized disclosure in the interest of the national defense of the United States."

ANSWER: Official information bearing on intelligence sources and methods which require protection inherently involves a mosaic of isolated and often seemingly unrelated bits and pieces of information which if improperly disclosed could endanger or reveal such sources and methods. The main criterion involves the application of experienced judgment to all aspects of the intelligence process in order to insure that any disclosure will not lead to counteraction which would jeopardize the continued existence and productivity of an intelligence source or method. In short, the criteria used to determine whether an item of information reveals an intelligence source or a method are not easily defined nor are they static. General guidelines have been set out which an official, in determining whether an item of information revealing an intelligence source or a method needs to be protected, should follow. Such guidelines are embodied in Agency regulation [] the National Security Council Directive on Classification, Downgrading, Declassification and Safeguarding of National Security Information of May 17, 1972 (Attachment A), and Director of Central Intelligence Directive No. 1/7 effective 5 October 1975 (Attachment B).

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QUESTION:

- "4) National Defense and Foreign Relations. Section 1 of Executive Order 11652 requires that official information be classified for protection against unauthorized disclosure in the interest of (i) the national defense or (ii) foreign relations of the United States. This Presidential directive shows that 'national defense' and 'foreign relations' are mutually exclusive alternatives for deciding whether to classify information."

COMMENT: In regard to the last sentence of the above paragraph, it should be pointed out that section 1 of E. O. 11652 states in part as follows: "official information or material which requires protection against unauthorized disclosure in the interest of the national defense or foreign relations of the United States (hereinafter collectively termed 'national security')...." Since both national defense and foreign relations categories are collectively termed national security it would seem that the intent of E. O. 11652 would not lead to the conclusion that national defense or foreign relations are mutually exclusive alternatives for deciding whether to classify information. In other words, "national security" includes both categories.

- "a) Are there circumstances in which the unauthorized disclosure of information regarding foreign relations of the United States, such as the disruption of foreign relations, could reasonably be expected to cause damage to the national defense?"

ANSWER: Yes. As an example, disclosure of certain information could cause a strain or a break in relations with a foreign country with which the U. S. has a mutual defense agreement which in turn could result in the denial to the U. S. by that country of the use of military bases in that country thus possibly damaging our national defense.

- "b) Could the Central Intelligence Agency perform its functions effectively if your authority to classify information for secrecy should be limited to information requiring protection in the interest of national defense, as was the case under Executive Order 10501?"

ANSWER: Whether the Agency could perform its functions effectively would depend on the interpretation that would

be given to the term "national defense" if adopted in the environment of today's world. Currently, this Agency is charged with the responsibility to produce intelligence on a wide range of "foreign relations" type matters for the use of our policy-makers. Unless such information when necessary could be protected from unauthorized disclosure then the Agency could not perform such functions effectively. It seems clear from a reading of E. O. 10501 that the term "national defense" as used therein included some of the above types of "foreign relations" matters. However, I feel that if the decision were made to replace E. O. 11652 with its predecessor E. O. 10501, then the term "national defense" would need careful and ample definition.

QUESTION:

"5) Authority to Classify. Please state:

- a) The number of senior principal deputies and assistants to the Director who currently exercise authority under section 2(A)(2) of Executive Order 11652 to classify information originally as Top Secret."

ANSWER: As of December 31, 1975, there were eleven senior principal deputies and assistants to the Director who exercised such authority.

- "b) The number of individuals, other than those in major elements of the agency as referred to in c) below, who exercise authority under section 2(B)(2) and (C) of Executive Order 11652 to classify information originally as:

- (1) Secret
- (2) Confidential"

ANSWER: There are no individuals, other than those in major elements of the Agency as referred to in question 5) c), who exercise authority to classify information Secret or Confidential.

"c) The identity of each major element of the agency, as that term is used in section 2(A)(3) of Executive Order 11652, and the number of individuals, if any, in each such major element who currently exercise authority under the Executive Order to classify information originally as:

- (1) Top Secret
- (2) Secret
- (3) Confidential"

ANSWER: The major elements of the Agency are:

Office of the Director
Office of General Counsel
Office of Legislative Counsel
Office of Inspector General
Intelligence Community Staff
National Intelligence Officers
Office of the Comptroller
Office of the Deputy Director for Intelligence
Office of the Deputy Director for Administration
Office of the Deputy Director for Operations
Office of the Deputy Director for Science
and Technology

Within the above listed major elements, there are 537 persons authorized to classify information Top Secret, 1344 persons authorized to classify information Secret, and 62 persons authorized to classify information Confidential. The above numbers do not include the Director or his senior principal deputies and assistants who head each of the major elements listed above. For security reasons, it is felt that the above numbers should not be broken down further in an unclassified document.

QUESTION:

"6) Effect of Limitation on Authority to Classify. According to section 2 of Executive Order 11652, and section I.A. of the National Security Council Directive of May 17, 1972, no person may exercise classification authority except those officials who are designated in the order or are specified in writing

pursuant to the order. Section I.B. of the N.S.C. Directive makes clear the fact that whenever a person incorporates into a document an item of information that is already classified, the previously assigned classification shall be reflected on the newly created document together with the identity of the classifier. Please advise whether the agency:

- a) Permits any person to exercise classification authority other than the Director and those officials who are specifically designated in writing pursuant to section 2, Executive Order 11652."

ANSWER: Agency regulations do not permit Agency officials to classify information unless authorized pursuant to the provisions of Agency regulation [] Part II a. Part II b of that regulation directs that in the event a person does not have authority to properly classify information, that person shall forward such information to someone who has such authority.

- "b) Considers this restriction on authority to assign security classifications as being satisfactory for performance of agency functions and responsibility."

ANSWER: This Agency does not consider such restriction on authority satisfactory for the performance of Agency functions and responsibilities.

QUESTION:

"7) Classification of Projects.

- a) Does the agency permit officials with classifying authority to assign a classification to projects and programs in their entirety, with no distinction between classified and non-classified items, and, if so:
 - 1) How many officials exercise such authority?
 - 2) What are the instructions that apply to proposals for (a) assigning such classifications, and (b) downgrading and declassifying information regarding such projects and programs?

- 3) How is the assigned classification communicated to individuals whose duties require that they have knowledge of it and who are expected to safeguard the items of information involved?"

ANSWER: Agency regulation [] Part II b provides that "a determination shall be made with respect to each document originated by CIA as to which security classification category (Top Secret, Secret or Confidential) if any, is applicable to the document." Agency regulations do not permit the classification of projects and programs in their entirety without distinction between classifiable and non-classifiable information.

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QUESTION:

- "8) Compilations of Non-Classified Information. Does the agency permit the placement of a security classification marking on compilations of items of non-classified information, such as a list of non-classified documents or a reproduction of non-classified documents on microfilm, and, if so, what are the instructions for:

- a) Assigning such classification?
- b) Cancelling an assigned classification?"

ANSWER: In general, Agency regulations do not permit the classification of compilations of items of non-classified information. However, as set out in [] Part II b (2), "Intelligence and intelligence sources and methods inherently involve a mosaic of information. Isolated and apparently unrelated items of information could endanger or reveal intelligence sources and methods." In the event a compilation of non-classified items, which, individually, would not be classifiable, was determined as revealing classifiable intelligence or intelligence sources and methods when joined in a compilation, then the classification of such a compilation would be permissible under Agency regulations and applicable statutes.

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QUESTION:

- "9) Special Handling Procedures. Please furnish us:

- a) A list of every marking and designator other than Top Secret, Secret and Confidential that the agency uses under section 9, Executive Order 11652, to indicate special access limitations and special handling requirements for classified information, and a statement of the meaning and use of each such marking and indicator."

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ANSWER: Certain markings and designators used by the Agency to indicate special access limitations and special handling requirements for classified information are listed in [] and Attachments A and B hereto. Such documents also contain a statement of the meaning and use of each such marking and indicator. In addition to the above mentioned markings and designators, this Agency utilizes additional markings/designators to indicate the need for special handling which are in furtherance of the "need-to-know" principle described in E. O. 11652 and Attachments A and B. However, a listing of such special markings/designators together with a statement of the meaning of each such marking/designator could not be provided in unclassified form without serious risk to the security of certain matters the compromise of which could endanger sensitive sources and methods.

- "b) The number of (1) Members of Congress and (2) the number of Congressional staff employees who are designated to have access to agency information bearing special access restrictions."

ANSWER: (1) Members of Congress and/or Congressional committees and their staffs are given access to Agency information on matters within their jurisdiction as described in the rules of each House consistent with the responsibility of the Director of Central Intelligence to protect intelligence sources and methods from unauthorized disclosure. (2) As of 5 January 1976, 78 Congressional staff employees had been cleared for access to Agency information bearing special access restrictions on a need-to-know basis.

QUESTION:

"10) Accountability Records. Section 6(E) of Executive Order 11652 requires that appropriate accountability records for classified information shall be established and maintained.

a) Please describe the system or systems operated by the agency to account for documents and other items classified:

- (1) Top Secret
- (2) Secret
- (3) Confidential"

ANSWER: (1) The Agency's procedures for accounting for Top Secret documents are based on E. O. 11652, the National Security Council implementation instructions (Attachment A), Intelligence Community directives, and Agency regulation

Under these procedures, designated individual component control officers maintain day-to-day control, accountability and locatability for each Top Secret document originated by, received in, held by or transmitted out of their components. Appropriate receipts and records are maintained. Control of certain Top Secret documents is presently being converted from a manual decentralized inventory/control system to an automated centralized inventory system. (2) and (3) Agency regulations require that accountability of Secret and Confidential material be maintained by the receipting of such material transmitted outside the Agency and the use of inventory lists, logs or other finding aids for internal control.

"b) Does the agency require that each completed Top Secret, Secret and Confidential document be recorded on the designated accountability record, including documents held by agency contractors, and, if so, is action taken on a continuing basis to assure adherence to the requirement?"

ANSWER: The Agency requires that Top Secret documents be recorded in the designated accountability record regardless of whether they are held by the Agency or by a contractor. Secret and Confidential records held by contractors are recorded on accountability records which are inspected approximately annually. There is no action taken on a

continuing basis to assure adherence for Secret and Confidential documents held by the Agency. We rely on the integrity of our employees and contractors and on normal supervision of such persons for adherence to requirements.

- "c) Does the requirement that accountability records be maintained for classified documents serve to make them quickly available for review when access to them is requested under the Freedom of Information Act?"

ANSWER: The accountability system for the control of Top Secret documents serves to make any document classified Top Secret readily available for review once such document is identified as containing the subject matter of a Freedom of Information request. However, most Freedom of Information requests are couched in terms which do not identify a specific or known document, for which the accountability system for control would be helpful. The requests usually are broad and in all-inclusive terms which requires considerable research before a document can be identified. The new centralized Top Secret control system will include a "quick listing" based on key words in document titles, which is expected to be of significant help in expediting the identification of documents which may have a bearing on a particular Freedom of Information request.

QUESTION:

- "11) Systematic Review for Declassification. Section 6(G) of Executive Order 11652 requires that classified information be reviewed on a systematic basis for declassification at the earliest practicable date.
- a) Please describe the system or systems operated by the agency for reviewing classified documents and other classified items to determine whether the classification may be cancelled. (This request applies to review of individual items, not to review of regulations or guides for assigning classifications.)"

ANSWER: Part III of Agency regulation [] which implements E. O. 11652, contains language similar to that of section 6(G) of the Order. It states that "...Agency components, to the extent practicable, shall review documents on a systematic basis and declassify and downgrade them, as warranted." In connection therewith, this Agency has the following active declassification programs:

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(1) Documents of Predecessor Agencies.

Pursuant to section III A of Attachment A and section 5(E) of E. O. 11652, the Agency in collaboration with the Records Declassification Division of the National Archives, is reviewing 30-year-old materials originated by CIA's predecessor agencies (the Coordinator of Information and the Office of Strategic Services). Significant progress has been made in completing the review of records held by the National Archives and Presidential libraries, and our efforts are now being concentrated on documents still in the custody of CIA. Some declassified record series have already been turned over to the National Archives for accessioning, e.g., OSS motion picture films, OSS maps, and captured German military-geographic studies.

(2) Freedom of Information/Privacy Act Requests.

As a result of the recent amendments to the Freedom of Information Act and the Privacy Act, this Agency is devoting a major effort to the review of Agency documents to determine which documents requested under these Acts have been or can be declassified. From January 1, 1975 to November 20, 1975 this Agency had received a total of 6,793 such requests. For a further discussion of the disposition of these requests, please see the letter from former Director Colby to you dated 20 December 1975. Materials declassified, in whole or in part, as the result of FOIA and Privacy requests are provided on a continuing basis to a commercial firm which indexes and microfilms the documents and makes their products available to the public on a commercial basis. (Other federal agencies are also involved in this program.)

(3) Mandatory Declassification Review Requests.

AT As a result of the provisions of E. O. 11652 as implemented by Part III a (3) of Agency regulation [] this Agency frequently receives requests for the mandatory review of certain Agency documents. This Agency receives on the average 230 such requests per year.

(4) Other.

In addition to the above mentioned programs, this Agency reviews certain specific documents or series of documents on an ad hoc basis as a result of particular requests. For example, a very large number of documents were reviewed for declassification as a result of the requests for documents levied by the Rockefeller "Commission on CIA Activities Within the United States," as well as the Senate and House Select Committees on Intelligence. Currently, the Agency is also reviewing all Agency documents provided the Warren Commission for the purpose of declassifying and releasing for public access as many of those documents as possible.

With respect to the above programs, the Agency publishes an Annual Declassification List, which includes citations to all documents which have become declassified through the Advanced Declassification Schedule or the General Declassification Schedule. Copies of this report are provided the National Archivist and documents listed therein become available to members of the public through that office.

"b) In practice, is each classified document held by the agency reviewed specifically for declassification on any established schedule, such as each six months, and, if not, would a requirement for such a review be practicable?"

ANSWER: Except for the programs described above, this Agency does not have a program aimed at the review of each individual classified Agency document for possible declassification on an established schedule and a requirement for a periodic review, such as every six months, would not be practical. Consideration has been given to establishing a

systematic program for reviewing all classified documents at specified periodic intervals. However, in view of the large volume of classified matter originated by the CIA, it is obvious that even that type of program would require a huge manpower commitment, thereby adversely affecting programs of higher priority. Moreover, the inherent sensitivity of intelligence sources and methods makes it questionable whether a program for the systematic classification review of all documents would result in a significant percentage of them being declassified, or even downgraded. We do plan to continue our consideration of the feasibility of such a program or, as an alternative, changes in the format and content of our intelligence reports which would enable us to make more of them subject to the General Declassification Schedule.

- "c) Is each classified document held by agency contractors reviewed specifically for declassification (1) on any established schedule, and (2) at completion of the contract which required use of the document?"

ANSWER: Classified documents held by Agency contractors are copies of documents held by the Agency. A review is made at the completion of each contract which may result in their being declassified or being returned to the Agency, but usually results in their being destroyed. There is no established schedule for reviewing these documents for declassification.

- "d) Is each document with a classification notation reviewed specifically for declassification at the time it is processed out of an office for retirement, and if not, why cannot such a review be made?"

ANSWER: Due to the enormous amount of classified material produced by this Agency, no program exists which would provide for a classification review of each classified document as it is processed out for retirement. Such a program would call for such an extremely large manpower commitment as to be almost physically impossible and would adversely affect Agency programs of higher priority. Furthermore, it is submitted that such an expenditure of public funds should

be geared to meet specific requirements clearly in the public interest. The interest must prompt the review.

- "e) Please advise us of any special instructions on reviewing intelligence sources and intelligence methods for declassification, including the authorization for declassification."

ANSWER: This Agency has not issued any special instructions for reviewing information bearing on intelligence sources and methods for declassification. However, as a member of the United States Intelligence Board Security Committee, the Agency helped prepare a proposed set of guidelines entitled Interim Intelligence Community Guidelines for Declassification or Extended Classification of Information Concerning Intelligence Sources and Methods. This proposal is presently under review by the Interagency Classification Review Committee. Upon concurrence, it will be submitted to the appropriate office for approval, promulgation and use by this Agency as well as others.

QUESTION:

- "12) Exemption of Classified Information from General Declassification Schedule. Please state, to the extent practicable, the percentage of agency documents in each classification category that are designated as being exempt from the general declassification schedule in section 5(A), Executive Order 11652."

ANSWER: As noted previously, the Director of Central Intelligence is charged by statute to protect intelligence sources and methods from unauthorized disclosure. Inherent in substantive information are clues to the means (source or method) by which it was obtained. Agency documents containing such information must normally be protected beyond the automatic declassification period to insure the continued efficacy of these sources and methods. Therefore, most Agency documents must be exempted from automatic declassification. It is not practicable to estimate the percentage of all Agency documents, whether by category or overall, that are so exempted. It can be said, however, that a large majority of Agency documents are so exempted.

QUESTION:

"13) Classified Contracts. Would you please state:

- a) Approximately how many of the agency's prime contracts currently in force involve disclosure to the contractor of information classified -

- (1) Top Secret
- (2) Secret
- (3) Confidential"

ANSWER: Agency contracts currently in force do not readily fall into the categories of Top Secret, Secret, and Confidential since many contracts call for disclosure to the contractor of a mixture of information bearing different degrees of classification. Given this, it is our best estimate that of the total number of Agency contracts, seven percent involve the disclosure to the contractors of information classified Top Secret, twelve percent involve Secret information, and forty-seven percent involve disclosure of information classified Confidential.

- "b) Approximately how many agency projects that are currently under contract awarded by some other agency involve disclosure to the contractor of information classified -

- (1) Top Secret
- (2) Secret
- (3) Confidential"

ANSWER: Information relative to the number of Agency projects currently under a contract awarded by some other federal agency which involve the disclosure to the contractor of classified information is not part of any of the Agency's automated systems and an answer to this question would require an immense amount of labor in manual research. Such a search would be further complicated by the fact that in many cases the Agency simply transfers funds to another agency which may do the work in-house, may contract out the work, or may utilize both.

"c) How many different commercial firms and other non-Federal entities are involved in performance of the agency's classified contracts."

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ANSWER: There are commercial firms and other non-federal entities which participate in Agency contracts involving classified information.

QUESTION:

"14) Non-Classified Intelligence Sources and Methods.

If an item of information revealing an intelligence source or an intelligence method does not qualify for a classification of Confidential or higher under Executive Order 11652, do you consider that you have responsibility under 50 U.S.C. 403(d)(3) for protecting such information from unauthorized disclosure, and if so:

- a) What is the basis for that belief?
- b) What criteria apply in determining the need for protection?
- c) What protection system is used?
- d) What would constitute an unauthorized disclosure?"

ANSWER: The responsibility placed upon the Director of Central Intelligence by the National Security Act of 1947 to protect intelligence sources and methods, and the requirements and authorities of E. O. 11652 to protect national security information and material levied on specified U. S. Government agencies and departments, are separate authorities and obligations. While some information which would reveal intelligence sources and methods would also clearly fall within the definitions of classifiable information set forth in E. O. 11652, not all such information is so readily categorized. In other words, information which would reveal intelligence sources and methods may require protection under both E. O. 11652 and the National Security Act of 1947; however, not all intelligence sources and methods information may necessarily meet the classification criteria set forth in the Executive Order. Since these are two separate and distinct authorities and obligations, a discussion of criteria used to protect one type of information will not necessarily produce an understanding of the criteria used to determine classifiability of the other.

While the criteria used to determine whether information is classifiable under E. O. 11652 is explicit in that Order, there are no criteria established in the National Security Act of 1947 to determine when and how information regarding sources and methods should be protected. This is left to the discretion of the Director of Central Intelligence. In fact, the Director of Central Intelligence uses many different means to protect information which would reveal sources and methods depending upon the sensitivity involved. These means range from a utilization of the provisions of paragraphs VI A (1) and (2) of Attachment A concerning the determination of trustworthiness (security clearance) and the need-to-know of the recipient of information; to physical control of information by limiting the access thereto by restricting access to the buildings in which such information is stored by locking such information in safes and vaults, by employing human guards to control access and by other physical means. Another means adopted by the Director of Central Intelligence to protect information bearing on intelligence sources and methods is to apply the classification system set out in E. O. 11652 to such information. In this regard, see Agency regulation HR 10-23, Parts I b, II b, and II B (2) which set forth inter alia that "The responsibility of the Director to protect intelligence sources and methods, as prescribed by the National Security Act of 1947, also will be implemented by CIA actions under the Order" [E. O. 11652]; that "The classification decision shall be based upon the definitions of security information (Part I, Section d) and the principles prescribed in the following paragraphs;" and that "Intelligence and intelligence sources and methods inherently involve a mosaic of information. Isolated and apparently unrelated items of information therefore could endanger or reveal intelligence sources and methods." Both civil and criminal legal remedies are available for certain unauthorized disclosures of classified information. Any disclosure of information which would reveal intelligence sources and methods, when such disclosure is not made pursuant to Agency regulations or authorizations, would be unauthorized in terms of this question.

QUESTION:

"15) Referral of Violations to Department of Justice. Please state

the number of cases arising in the agency during the preceding two-year period under section 13, Executive Order 11652, involving:

- a) An officer or employee being disciplined for the unauthorized disclosure of classified information."

ANSWER: With the exception of administrative penalties for security violations, e.g. leaving a safe open, or leaving a classified document exposed, in which an actual unauthorized disclosure could not be ascertained, records of this Agency do not reveal that any officer or employee has been disciplined for the unauthorized disclosure of classified information.

- "b) The referral to the Department of Justice of a possible violation of criminal statutes regarding unauthorized disclosure of information."

ANSWER: Three cases have been brought to the attention of the Department of Justice in which this Agency believes there was a possible violation of the criminal statutes regarding the unauthorized disclosure of information.

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